

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

---

<b>IN RE:</b>	<b>:</b>	<b>Chapter 11</b>
	<b>:</b>	
<b>SEARS HOLDINGS CORPORATION,</b>	<b>:</b>	<b>Case No. 18-23538 (RDD)</b>
<b>And K-MART CORPORATION</b>	<b>:</b>	<b>(Jointly Administered)</b>

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**NOTICE OF MOTION FOR RELIEF FROM STAY**

**To: Jacqueline Mancus  
Weil, Gothshal, and Manges, LLP  
757 Fifth Avenue  
New York, New York 10153**

PLEASE TAKE NOTICE, that upon the annexed Affirmation of Samuel G. Encarnacion, Esquire, the undersigned will present the attached proposed Order to the Honorable Judge Robert D. Drain, Bankruptcy Judge for the United States for the Southern District of New York (the "Bankruptcy Court"), at 300 Quarropas Street, White Plains, New York 10601 on February 14, 2019, at 10:00 am (Prevailing Eastern Time) for an Order granting relief from the Automatic Stay pursuant to 11 U.S.C. §362, and for such other and further relief as this Court deems just and appropriate.

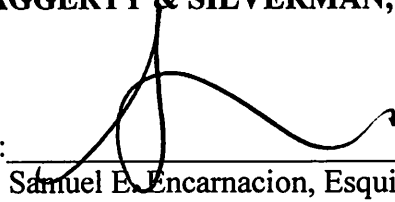
PLEASE TAKE FURTHER NOTICE, that pursuant to Local Bankruptcy Rule 9006-1 any answering Affidavits shall be served so as to ensure actual receipt not later than three (3) days before the return date of this Motion.

PLEASE TAKE FURTHER NOTICE, that Objections, if any, to the relief requested in this Motion must comply with the Federal Rules of Bankruptcy Procedure and the Local Rules of the United States Bankruptcy Court for the Southern District of New York, must be set forth in writing describing the basis therefore and must be filed with the Bankruptcy Court at least seven (7) calendar days before the applicable hearing by or as otherwise ordered by the Court. Failure to file Objections by the Objection Deadline may cause the Court to not consider the Objection.

PLEASE TAKE FURTHER NOTICE that a hearing shall be held on before the United States for the Southern District of New York (the "Bankruptcy Court"). The moving and objecting parties are required to attend the hearing, and failure to attend in person or by counsel may result in relief being granted or denied upon default.

Respectfully submitted,  
**HAGGERTY & SILVERMAN, P.C.**

Dated: 1/16/19

By:   
\_\_\_\_\_  
Samuel B. Encarnacion, Esquire  
Attorney Identification No. 64417  
*Attorney for Plaintiff*

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

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<b>IN RE:</b>	:	<b>Chapter 11</b>
	:	
<b>SEARS HOLDINGS CORPORATION,</b>	:	<b>Case No. 18-23538 (RDD)</b>
<b>And K-MART CORPORATION</b>	:	<b>(Jointly Administered)</b>

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**ORDER GRANTING LIMITED RELIEF FROM THE AUTOMATIC STAY**

Upon consideration of the *Motion of Maria Gonzalez for Relief from Stay Under Section 362 of the Bankruptcy Code* (the "Motion") and due and sufficient notice of the Motion having been given under the circumstances; and it appearing that no other or further notice need be provided; and the Court having determined that sufficient cause exists to grant the Motion; and after due deliberation thereon and good and sufficient cause appearing therefor it is hereby ORDERED that:

The Motion is GRANTED to the extent described herein; and it is further

ORDERED that the automatic stay is hereby modified as of the date hereof to allow the Movants to commence litigation against the Debtors in the appropriate Pennsylvania state court and to prosecute and liquidate the Movants' personal injury claims (the "Claims") against the Debtors; and it is further

ORDERED that the Movants may liquidate their Claims against the Debtors either through settlement or adjudication of the Claims and may enforce any such settlement or judgment solely through the application of the proceeds of Debtors' insurance to the extent that any such proceeds are available; and it is further

ORDERED that the automatic stay shall otherwise remain in full effect, including but not limited to the prohibition of any actions to enforce a judgment or award, or collect or exercise

control over any property of the Debtors, except for the application of any available insurance proceeds as provided herein; and it is further

ORDERED that this Court shall retain jurisdiction over all matters related to the implementation of this Order.

Dated: \_\_\_\_\_

\_\_\_\_\_  
JUDGE

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

<b>IN RE:</b>	:	<b>Chapter 11</b>
	:	
<b>SEARS HOLDINGS CORPORATION,</b>	:	<b>Case No. 18-23538 (RDD)</b>
<b>And K-MART CORPORATION</b>	:	<b>(Jointly Administered)</b>

**AFFIRMATION IN SUPPORT OF MOTION OF MARIA GONZALEZ FOR RELIEF  
FROM AUTOMATIC STAY UNDER SECTION 362 OF THE BANKRUPTCY CODE**

I, Samuel G. Encarnacion, attorney for creditor, Maria Gonzalez, affirms that the following statements are true under penalties of perjury:

1. I am an attorney with Haggerty & Silverman, P.C., attorneys for Maria Gonzalez (hereinafter "Creditor") on the above named debtors, Sears Holdings Corporation and K-Mart Corporation (hereinafter "Debtors").

2. This Court has subject matter jurisdiction over this proceeding pursuant to Title 28 of the United States Code Sections 1334(b) and 157(a). Venue is proper pursuant to Title 28 of the United States Code Sections 1408 and 1409.

3. By provision of 11 U.S.C. §507 all persons are enjoined and stayed from commencing or continuing any suit against the debtor. On October 30, 2018, a Notice of Bankruptcy Filing and Imposition of Automatic Stay was filed with the Court of Common Pleas of Lancaster County, Pennsylvania.

4. Creditors, by and through their attorney, Samuel G. Encarnacion, hereby moves this Court to grant relief from the Automatic Stay, pursuant to 11 U.S.C. §362, allowing them to proceed with their claims for personal injury against Debtors in the Court to seek recovery from any and all insurance policies to the extent possible, maintained by or available to the Debtors; and that recovery shall be limited to the available insurance coverage, and that the Creditor shall not seek recoveries from Debtors, their estates, or their successors, there being good and sufficient cause for the waiver of the Stay set forth in the Bankruptcy Rule 4001(a)(3).

5. Upon information and belief, Debtors had general liability insurance at the time of Creditor's loss.

### **FACTUAL BACKGROUND**

6. Due to the negligence of Debtors, and on September 23, 2016, Maria Gonzalez was seriously injured in a slip and fall incident at K-Mart Store #4373 owned by Sears Holding Company and K-Mart Corporation, and was located at 1890 Fruitville Pike in Lancaster, Pennsylvania.

7. As a result of her slip and fall, Creditor, Maria Gonzalez suffered serious and permanent personal injury, requiring costly medical treatment related to this incident. As a result of said incident, a Writ of Summons was filed on July 25, 2018, *hereto attached as Exhibit "A"*.

8. On October 15, 2018, Debtors filed for Chapter 11 Bankruptcy in the Southern District of New York. As a result of said proceedings, Creditor filed Proof of Claims which have been docketed at Claim #5213 and 5361. Said Proof of Claims and Receipts of such claims, *hereto attached as Exhibit "B"*.

9. As such, Creditor seeks an Order lifting the Stay against these Debtors.

### **CREDITORS ARE ENTITLED TO RELIEF FROM THE AUTOMATIC STAY**

10. Upon the filing of a Bankruptcy petition, an Automatic Stay takes place giving the debtor "a short respite from creditors' demands, during which a debtor will have the opportunity to develop and implement plans to right his financial affairs." *In re Bogdanovich*, 292 F.3d 104, 110 (2d Cir. 2002). The Bankruptcy Code provides that relief from the Automatic Stay may be granted after notice and a hearing, "for cause." *See* 11 U.S.C. §362(d)(1). The Bankruptcy Code does not define the meaning of the phrase "for cause." *See Bogdanovich*, 292 F.3d at 110. In determining whether there is cause to grant relief from the automatic stay, a Court in this

circuit should examine the factors outlined in *In re Sonmax Industries Incorporated*. See *In re Sonmax Indus., Inc.* 907 F.2d 1280, 1286 (2d Cir. 1990). The factors to consider are as follows:

1) whether relief would result in a partial or complete resolution of the issues; 2) lack of any connection with or interference with the bankruptcy case; 3) whether the other proceeding involves the debtor as a fiduciary; 4) whether a specialized tribunal with the necessary expertise has been established to hear the cause of action; 5) whether the debtor's insurer has assumed full responsibility for defending it; 6) whether the action primarily involves third parties; 7) whether litigation in another forum would prejudice the interests of other creditors; 8) whether the judgment claim arising from the other action is subject to equitable subordination; 9) whether movant's success in the other proceeding would result in a judicial lien avoidable by the debtor; 10) the interests of judicial economy and the expeditious and economical resolution of litigation; 11) whether the parties are ready to proceed with litigation or settlement in the other proceeding; and 12) impact of the stay on the parties and the balance of harms. *Id.*

11. All twelve *Sonmax* factors will not be relevant in every case. See *In re Masse*, 167 F.3d 139, 143 (2d Cir. 1999). Furthermore, the Court in its discretion, need not grant equal weight to each factor. See *In re Burger Boys, Inc.*, 183 B.R. 682, 688 (Bankr. S.D.N.Y. 1994); *In re New York Medical Group, P.C.*, 265 B.R. 408, 413 (Bankr. S.D.N.Y. 2001). Additionally, the Bankruptcy Court has wide discretion to grant relief and lift the stay. See *In re Laventhol & Horwath*, 139 B.R. 109 (Bankr. S.D.N.Y. 1992); and *Matter of Thomson McKinnon, Inc.*, 130 B.R. 721 (Bankr. S.D.N.Y. 1991). In the instant matter, factors one, two, five, ten, eleven, and twelve are relevant and weight in Creditor's favor in the instant application.

12. Under the factors set forth in *Sonmax*, Creditor is entitled to relief from the Automatic Stay in order to pursue their personal injury claim against Debtors in the Court of Common Pleas of Lancaster County. As to the second factor, Creditor's personal injury claim

has no connection and will not interfere with Debtor's Chapter 11 efforts since the Creditor is only seeking recovery against Debtor's commercial and general liability insurance policies effective on the date of Creditor's accident. Creditor herein agrees to seek recovery limited to those policies and will not seek to recover damages in excess of said insurance policies

13. As to the fifth factor, Debtors were issued a liability insurance policy, for purposes of general commercial liability and in part for personal injury. Where the creditor must prove the liability of the debtor for the limited purpose of recovering from a debtor case law supports the proposition that relief from an Automatic Stay should be granted. *See e.g., Green v Welsh*, 956 F.2d 30 (2d Cir. 1992); and *Terwilliger v. Terwilliger*, 206 F.3d 240, 247-248 (2d Cir. 2000). In pursuing her personal injury claim, Creditors will attempt to prove Debtor's liability solely to recover from its liability insurers. Debtor's liability insurance carriers will bear all of the cost required to defend against Creditor's personal injury claim. As to any costs not borne by Debtor's liability insurance carrier, case law states that the cost of defending litigation, by itself, is not regarded as constituting "great prejudice," precluding relief from the Automatic Stay. *See In re Unioil*, 54 B.R. 192 (Bankr. D. Colo. 1985).

14. Creditor believes and therefore avers that under said general liability policy, the insolvency or bankruptcy of the debtor-insured, or the insolvency of its estate shall not release the insurance company or risk retention from the payment of damages for injuries sustained during the term of and within coverage of said policy.

15. Here, Creditor's personal injury claim arose on September 23, 2016, and Debtor's filed their Bankruptcy Petition on October 15, 2018.

16. As to factors ten and eleven, Creditor is prepared and willing to actively prosecute the matter in Lancaster County Court of Common Pleas. In fact, on July 25, 2018, a Writ of Summons was filed on this claim. Prior to this Court's stay, Creditor was in the process of



preparing and filing a Complaint with Lancaster County Court of Common Pleas. In the interest of judicial efficiency, this motion must be granted prior to any further litigation regarding the Premises Liability claim.

17. As to factor twelve, Creditor, Maria Gonzalez, suffered serious and permanent personal injuries and Creditor's accident was more than over a year ago. As a result, Creditor may suffer through the pendency of the stay detrimental delay and should, in the interests of justice, be given the opportunity to continue this action in State court. Debtors will not suffer as the Creditor seeks only the Debtor's available insurance coverage. When balancing the interests between the Creditor and the Debtors, it is readily apparent that the Creditor's harm greatly outweighs the Debtors' harm.

18. In the event a judgment against Debtors is recovered by Creditor in the aforementioned claim, and such judgment remains unsatisfied at the expiration of the time stated in the insurance laws of the Commonwealth of Pennsylvania, Creditor will commence an action against Debtor's insurance company or risk retention policy.

19. Therefore, the prosecution of this claim will in no manner reduce or jeopardize the assets of the debtor to the detriment of the other Creditors in bankruptcy.

20. In the event Creditors are permitted to pursue the aforementioned claim they will not pursue a claim in this proceeding.

**THE LANCASTER COUNTY COURT OF COMMON PLEAS IS**  
**THE PROPER VENUE FOR CREDITOR'S PERSONAL INJURY ACTION**

21. Under Section 157(b)(2)(B) of Title 28 of the United States Code, the liquidation or estimation of an non-liquidated personal injury tort claim is a non-core matter. A Bankruptcy Court lacks jurisdiction to liquidate non-core matters such as a personal injury claim. *See In re*


*United States Lines, Inc.*, 1998 U.S. Dist. LEXIS 10135 (S.D.N.Y. July 9, 1998), *aff'd*, 216 F.3d 228 (2d Cir.2000). Regarding non-core matters, a Bankruptcy Court may only submit proposed findings of fact and conclusions of law to the District Judge who then may enter a final judgment. See 28 U.S.C. §157(c)(1).

22. Here, Creditor's injury claim involves issues of state law which may be more efficiently decided by a State Court. Hearing of a Creditor's personal injury claim by the Bankruptcy Court will not be in the interests of the expeditious and economical resolution of litigation because it will unnecessarily expend resources of the bankruptcy proceeding. If relief from the Automatic Stay is denied, Creditor, who has already endured substantial personal injury and medical costs, will continue to accrue costly medical expenses with no means of obtaining relief from a State Court until such time that Debtors resolve the Chapter 11 case and the Automatic Stay is lifted. Any further delay will lead to undue prejudice to the rights of the Creditor to proceed with her prepetition litigation and seek justice for injuries sustained more than a year ago.

WHEREFORE, Creditor respectfully requests that the Court grant the instant application for relief from the Bankruptcy Stay so that the matter may proceed into litigation in Lancaster County Court, and, for such other and further relief as is just and proper.

Respectfully submitted,  
**HAGGERTY & SILVERMAN, P.C.**

Dated: Jan 16, 2019

By:   
Samuel G. Encarnacion, Esquire  
Attorney Identification No. 64417  
*Attorney for Plaintiff*

**EXHIBIT “A”**

**HAGGERTY & SILVERMAN, P.C.**

Howard G. Silverman, Esquire  
Attorney Identification No.: 48319  
Samuel G. Encarnacion, Esquire  
Attorney Identification No.: 64417  
240 North Duke Street  
Lancaster, PA 17602  
(717) 397-3200  
[SamE@haggertylaw.com](mailto:SamE@haggertylaw.com)

COPY

**IN THE COURT OF COMMON PLEAS OF LANCASTER COUNTY, PENNSYLVANIA  
CIVIL ACTION – LAW**

MARIA GONZALEZ  
5527 N.W. 3<sup>rd</sup> Street  
Miami, FL 33126

Plaintiff

vs.

K-MART CORPORATION  
d/b/a K-MART STORE #4373  
3100 West Big Beaver Road  
Troy, MI 48084

and

SEARS HOLDINGS CORPORATION  
d/b/a K-MART  
3333 Beverly Road  
Hoffman Estates, IL 60179

Defendants

No. CI-18-

18-06005

JURY TRIAL DEMANDED

ENTERED AND FILED  
2018 JUL 25 AM 10:03  
PROTHONOTARY'S OFFICE  
LANCASTER, PA

**PRAECIPE FOR WRIT OF SUMMONS**

TO THE PROTHONOTARY:

Please issue a Writ of Summons on behalf of the Plaintiff and against each of the Defendants, K-Mart Corporation d/b/a K-Mart Store #4373 and Sears Holdings Corporation d/b/a K-Mart, in the above-captioned case.

Respectfully submitted,  
**HAGGERTY & SILVERMAN, P.C.**

DATE: July 25, 2018

By: [Signature]  
Samuel G. Encarnacion, Esquire  
Attorney ID. 64417  
*Attorney for Plaintiff*

---

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CIVIL ACTION – LAW

MARIA GONZALEZ  
5527 N.W. 3<sup>rd</sup> Street  
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Defendants

No. CI-18-

18-06005

JURY TRIAL DEMANDED

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WRIT OF SUMMONS

TO: K-MART CORPORATION D/B/A K-MART STORE #4373  
and SEARS HOLDINGS CORPORATION d/b/a K-MART

You are notified that Plaintiff Maria Gonzalez has commenced an action against each of  
you.

Date: 7-25-2018

KATHERINE WOOD-JACOBS, PROTHONOTARY

By: \_\_\_\_\_

  
Deputy

HAGGERTY & SILVERMAN, P.C.

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Miami, FL 33126

Plaintiff

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3100 West Big Beaver Road  
Troy, MI 48084

and

SEARS HOLDINGS CORPORATION  
d/b/a K-MART  
3333 Beverly Road  
Hoffman Estates, IL 60179

Defendants

No. CI-18-

**18-06005**

**JURY TRIAL DEMANDED**

---

**CERTIFICATE OF COMPLIANCE**

I hereby certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

Respectfully submitted,  
**HAGGERTY & SILVERMAN, P.C.**

Dated: July 25, 2018

By: 

Samuel E. Encarnacion, Esquire  
Attorney Identification No. 64417  
*Attorney for Plaintiff*



No. CI-18-06005

**HAGGERTY & SILVERMAN, P.C.**

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[SamE@haggertylaw.com](mailto:SamE@haggertylaw.com)

ENTERED AND FILED

2018 AUG 31 AM 11:13

CLERK OF COURT  
LANCASTER, PA

COPY

**IN THE COURT OF COMMON PLEAS OF LANCASTER COUNTY, PENNSYLVANIA  
CIVIL ACTION – LAW**

MARIA GONZALEZ  
5527 N.W. 3<sup>rd</sup> Street  
Miami, FL 33126

Plaintiff

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and

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3333 Beverly Road  
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Defendants

No. CI-18-06005

**JURY TRIAL DEMANDED**

**AFFIDAVIT OF SERVICE**

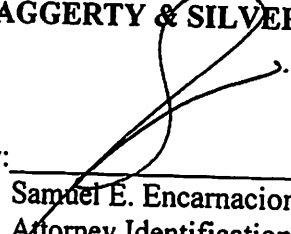
I, Samuel G. Encarnacion, Esquire, of Haggerty & Silverman P.C., being duly affirmed according to law, deposes and says that he is the attorney for the Plaintiff in the above case. That on the 30<sup>th</sup> day of July, 2018, I forwarded a true and correct copy of the Writ of Summons to Defendant, K-Mart Corporation d/b/a K-Mart Store #4373, to its place of business, 3100 West Big Beaver Road, Troy, MI 48084, by United States Mail, Certified Mail Item Number 7013 1710 0000 6194 7931, with return receipt requested. That correspondence was returned to our office marked “not deliverable as addressed; unable to forward.” And that on the 21<sup>st</sup> day of August, 2018, I forwarded a true and correct copy of the Writ of Summons to Defendant, K-Mart

No. CI-18-06005

Corporation d/b/a K-Mart Store #4373, to its place of business, 3333 Beverly Road, Hoffman Estates, IL 60179, by United States Mail, Certified Mail Item Number 7013 1710 0000 6194 8280, with return receipt requested. Said return receipt signed indicating it was received was returned to Haggerty & Silverman, P.C. on the 24<sup>th</sup> day of August, 2018, a Certified Mail Return Receipt bearing Item Number 7013 1710 0000 6194 8280 signed by Defendant, which is attached hereto, and made a part hereof; and that the purpose of this Affidavit is to show proper service of the Writ of Summons, which service satisfies the requirements of Pa. R.C.P. No. 400 et seq.

Respectfully submitted,  
**HAGGERTY & SILVERMAN, P.C.**

Dated: Aug 31, 2018

By:   
Samuel E. Encarnacion, Esquire  
Attorney Identification No. 64417  
*Attorney for Plaintiff*



**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

K-mart Corp d/b/a Kmart Store  
Attn: Risk Mgmt. #4373  
3333 Beverly Road  
Hoffman Estates, IL 60179



9590 9402 3091 7124 5586 09

2. Article Number (Transfer from service label)

7013 1710 0000 6194 8280

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

X *C. Cemen*

- ☐ Agent  
☐ Addressee

B. Received by (Printed Name)

*C. CEMEN*

C. Date of Delivery

*8/24/18*

- D. Is delivery address different from item 1? ☐ Yes  
If YES, enter delivery address below: ☐ No

AUG 28 2018

3. Service Type

- |  |   |
|--|---|
| <input type="checkbox"/> Adult Signature                               | <input type="checkbox"/> Priority Mail Express®                     |
| <input type="checkbox"/> Adult Signature Restricted Delivery           | <input type="checkbox"/> Registered Mail™                           |
| <input type="checkbox"/> Certified Mail®                               | <input type="checkbox"/> Registered Mail Restricted Delivery        |
| <input checked="" type="checkbox"/> Certified Mail Restricted Delivery | <input checked="" type="checkbox"/> Return Receipt for Merchandise  |
| <input type="checkbox"/> Collect on Delivery                           | <input type="checkbox"/> Signature Confirmation™                    |
| <input type="checkbox"/> Collect on Delivery Restricted Delivery       | <input type="checkbox"/> Signature Confirmation Restricted Delivery |
| <input type="checkbox"/> Insured Mail                                  |   |
| <input type="checkbox"/> Insured Mail Restricted Delivery (over \$500) |   |

**HAGGERTY & SILVERMAN, P.C.**

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MARIA GONZALEZ	:	
5527 N.W. 3 <sup>rd</sup> Street	:	
Miami, FL 33126	:	
Plaintiff	:	No. CI-18-06005
vs.	:	
K-MART CORPORATION	:	
d/b/a K-MART STORE #4373	:	
3100 West Big Beaver Road	:	
Troy, MI 48084	:	
and	:	
SEARS HOLDINGS CORPORATION	:	
d/b/a K-MART	:	
3333 Beverly Road	:	
Hoffman Estates, IL 60179	:	
Defendants	:	<b>JURY TRIAL DEMANDED</b>


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**CERTIFICATE OF COMPLIANCE**

I hereby certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

Respectfully submitted,  
**HAGGERTY & SILVERMAN, P.C.**

Dated: Aug. 31, 2018

By:   
\_\_\_\_\_  
Samuel E. Encarnacion, Esquire  
Attorney Identification No. 64417  
*Attorney for Plaintiff*



No. CI-18-06005

**HAGGERTY & SILVERMAN, P.C.**

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ENTERED AND FILED

2018 AUG 31 AM 11:13

LANCASTER COUNTY  
COPY

**IN THE COURT OF COMMON PLEAS OF LANCASTER COUNTY, PENNSYLVANIA  
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Plaintiff

vs.

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Defendants

No. CI-18-06005

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**AFFIDAVIT OF SERVICE**

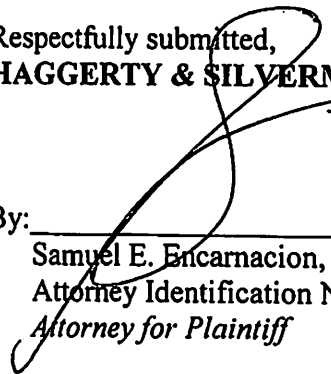
I, Samuel G. Encarnacion, Esquire, of Haggerty & Silverman P.C., being duly affirmed according to law, deposes and says that he is the attorney for the Plaintiff in the above case; that on the 30<sup>th</sup> day of July, 2018, I forwarded a true and correct copy of the Writ of Summons to Defendant, Sears Holdings Corporation d/b/a K-Mart, to its place of business, 3333 Beverly Road, Hoffman Estates, IL 60179, by United States Mail, Certified Mail Item Number 7013 1710 0000 6194 9188, with return receipt requested. Said return receipt signed indicating it was received was returned to Haggerty & Silverman, P.C. on the 8<sup>th</sup> day of August, 2018, a Certified Mail Return Receipt bearing Item Number 7013 1710 0000 6194 9188 signed by Defendant,

No. CI-18-06005

which is attached hereto, and made a part hereof; and that the purpose of this Affidavit is to show proper service of the Writ of Summons, which service satisfies the requirements of Pa. R.C.P. No. 400 et seq.

Respectfully submitted,  
**HAGGERTY & SILVERMAN, P.C.**

Dated: Aug 31, 2018

By:   
\_\_\_\_\_  
Samuel E. Encarnacion, Esquire  
Attorney Identification No. 64417  
*Attorney for Plaintiff*

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Sears Holdings Corporation  
d/b/a K-Mart  
3333 Beverly Road  
Hoffman Estates, IL 60179



9590 9402 3091 7124 5496 76

2. Article Number (Transfer from service label)

7018 1111 1111 1111 1111 1111

PS Form 3811 July 2015 PSN 7530-02-000-9055

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

X C CONNOR

- ☐ Agent  
☐ Addressee

B. Received by (Printed Name)

C CONNOR

C. Date of Delivery

- D. Is delivery address different from item 1? ☐ Yes  
If YES, enter delivery address below: ☐ No

3. Service Type

- |  |   |
|--|---|
| <input type="checkbox"/> Adult Signature                         | <input type="checkbox"/> Priority Mail Express®                     |
| <input type="checkbox"/> Adult Signature Restricted Delivery     | <input type="checkbox"/> Registered Mail™                           |
| <input checked="" type="checkbox"/> Certified Mail®              | <input type="checkbox"/> Registered Mail Restricted Delivery        |
| <input type="checkbox"/> Certified Mail Restricted Delivery      | <input checked="" type="checkbox"/> Return Receipt for Merchandise  |
| <input type="checkbox"/> Collect on Delivery                     | <input type="checkbox"/> Signature Confirmation™                    |
| <input type="checkbox"/> Collect on Delivery Restricted Delivery | <input type="checkbox"/> Signature Confirmation Restricted Delivery |

Return Receipt



**HAGGERTY & SILVERMAN, P.C.**

Howard G. Silverman, Esquire  
Attorney Identification No.: 48319  
Samuel G. Encarnacion, Esquire  
Attorney Identification No.: 64417  
240 North Duke Street  
Lancaster, PA 17602  
(717) 397-3200  
[SamE@haggertylaw.com](mailto:SamE@haggertylaw.com)

---

**IN THE COURT OF COMMON PLEAS OF LANCASTER COUNTY, PENNSYLVANIA  
CIVIL ACTION – LAW**

MARIA GONZALEZ :  
5527 N.W. 3<sup>rd</sup> Street :  
Miami, FL 33126 :  
Plaintiff : No. CI-18-06005  
vs. :

K-MART CORPORATION :  
d/b/a K-MART STORE #4373 :  
3100 West Big Beaver Road :  
Troy, MI 48084 :  
and :  
SEARS HOLDINGS CORPORATION :  
d/b/a K-MART :  
3333 Beverly Road :  
Hoffman Estates, IL 60179 :  
Defendants : **JURY TRIAL DEMANDED**

---

**CERTIFICATE OF COMPLIANCE**

I hereby certify that this filing complies with the provisions of the *Public Access Policy* of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

Respectfully submitted,  
**HAGGERTY & SILVERMAN, P.C.**

Dated: Aug. 31, 2018

By:   
Samuel E. Encarnacion, Esquire  
Attorney Identification No. 64417  
*Attorney for Plaintiff*

**EXHIBIT "B"**

Fill in this information to identify the case:

Debtor 1 K-Mart Corporation

Debtor 2  
(Spouse, if filing)

United States Bankruptcy Court for the: Southern District of New York

Case number 18-23538 (RDD)

**COPY**

Claim No. 5213  
Initials K.L./LS

RECEIVED  
NOV 19 2018  
PRIME CLERK LDC

Official Form 410

**Proof of Claim**

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

**Part 1: Identify the Claim**

1. Who is the current creditor?

Maria Gonzalez

Name of the current creditor (the person or entity to be paid for this claim)

Other names the creditor used with the debtor

2. Has this claim been acquired from someone else?

☒ No

☐ Yes. From whom?

3. Where should notices and payments to the creditor be sent?

Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Where should notices to the creditor be sent?

Haggerty & Silverman, P.C.

Name

240 North Duke Street

Number Street

Lancaster

PA

17602

City

State

ZIP Code

Contact phone 717-397-3200

Contact email SamE@haggertylaw.com

Where should payments to the creditor be sent? (if different)

Haggerty & Silverman, P.C.

Name

240 North Duke Street

Number Street

Lancaster

PA

17602

City

State

ZIP Code

Contact phone 717-397-3200

Contact email SamE@haggertylaw.com

Uniform claim identifier for electronic payments in chapter 13 (if you use one):

4. Does this claim amend one already filed?

☒ No

☐ Yes. Claim number on court claims registry (if known)

Filed on MM / DD / YYYY

5. Do you know if anyone else has filed a proof of claim for this claim?

☒ No

☐ Yes. Who made the earlier filing?



**Part 2: Give Information About the Claim as of the Date the Case Was Filed**

6. Do you have any number you use to identify the debtor? ☒ No  
☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: \_\_\_\_\_

7. How much is the claim? \$ 85,000.00. Does this amount include interest or other charges?  
☒ No  
☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. **What is the basis of the claim?** Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.  
Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).  
Limit disclosing information that is entitled to privacy, such as health care information.  
Unliquidated personal injury claim with demand of \$85,000.

9. Is all or part of the claim secured? ☒ No  
☐ Yes. The claim is secured by a lien on property.  
**Nature of property:**  
☐ Real estate. If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.  
☐ Motor vehicle  
☐ Other. Describe: \_\_\_\_\_  
**Basis for perfection:** \_\_\_\_\_  
Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)  
**Value of property:** \$ \_\_\_\_\_  
**Amount of the claim that is secured:** \$ \_\_\_\_\_  
**Amount of the claim that is unsecured:** \$ \_\_\_\_\_ (The sum of the secured and unsecured amounts should match the amount in line 7.)  
**Amount necessary to cure any default as of the date of the petition:** \$ \_\_\_\_\_  
**Annual Interest Rate (when case was filed)** \_\_\_\_\_ %  
☐ Fixed  
☐ Variable

10. Is this claim based on a lease? ☒ No  
☐ Yes. Amount necessary to cure any default as of the date of the petition. \$ \_\_\_\_\_

11. Is this claim subject to a right of setoff? ☒ No  
☐ Yes. Identify the property: \_\_\_\_\_

12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

☒ No

☐ Yes. Check one:

- ☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).
- ☐ Up to \$2,850\* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).
- ☐ Wages, salaries, or commissions (up to \$12,850\*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).
- ☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).
- ☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).
- ☐ Other. Specify subsection of 11 U.S.C. § 507(a)( ) that applies.

Amount entitled to priority

\$ \_\_\_\_\_

\$ \_\_\_\_\_

\$ \_\_\_\_\_

\$ \_\_\_\_\_

\$ \_\_\_\_\_

\$ \_\_\_\_\_

\* Amounts are subject to adjustment on 4/01/19 and every 3 years after that for cases begun on or after the date of adjustment.

**Part 3: Sign Below**

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

- ☐ I am the creditor.
- ☒ I am the creditor's attorney or authorized agent.
- ☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
- ☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 11/13/2018  
MM / DD / YYYY

Signature

Print the name of the person who is completing and signing this claim:

Name Samuel G. Encarnacion  
First name Middle name Last name

Title Attorney

Company Haggerty & Silverman, P.C.  
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address 240 North Duke Street  
Number Street

Lancaster PA 17602  
City State ZIP Code

Contact phone 717 397-3200 Email SamE@haggertylaw.com



**Prime Clerk**

830 Third Ave, 9<sup>th</sup> Floor  
New York, NY 10022

338 111

In re Sears Holdings Corporation  
Case No. 18-23538

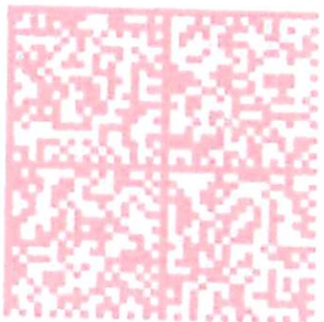
United States Bankruptcy Court for the Southern District of New York (White Plains)

**PRIME CLERK RECEIVED YOUR  
PROOF OF CLAIM.**

Date Filed: 11/19/2018

Proof of Claim No.: 5213

For additional information, please visit  
<http://restructuring.primeclerk.com/Sears>,  
or call us at 844.384.4460.



U.S. POSTAGE  PITNEY BOWES

ZIP 11232 \$ 000.35<sup>0</sup>  
02 4W  
0000349804 NOV 30 2018

Maria Gonzalez  
Haggerty & Silverman, P.C.  
240 North Duke Street  
Lancaster, PA 17602

18-23538-shl Doc 1586 Filed 01/16/19 Entered 01/16/19 16:09:37 Main Document  
Pg 27 of 32

**COPY**

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NOV 19 2018  
PRIME CLERK LLC

Claim No. 5361  
Initials K.L./IS

**Fill in this information to identify the case:**

Debtor 1 Sears Holdings Corporation  
Debtor 2 \_\_\_\_\_  
(Spouse, if filing)  
United States Bankruptcy Court for the: Southern District of New York  
Case number 18-23538 (RDD)

**Official Form 410**

**Proof of Claim**

04/16

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

**Part 1: Identify the Claim**

1. Who is the current creditor?	<u>Maria Gonzalez</u> Name of the current creditor (the person or entity to be paid for this claim) Other names the creditor used with the debtor _____	
2. Has this claim been acquired from someone else?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. From whom? _____	
3. Where should notices and payments to the creditor be sent?  Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)	Where should notices to the creditor be sent?  <u>Haggerty &amp; Silverman, P.C.</u> Name <u>240 North Duke Street</u> Number Street <u>Lancaster</u> <u>PA</u> <u>17602</u> City State ZIP Code Contact phone <u>717-397-3200</u> Contact email <u>SamE@haggertylaw.com</u>	Where should payments to the creditor be sent? (if different)  <u>Haggerty &amp; Silverman, P.C.</u> Name <u>240 North Duke Street</u> Number Street <u>Lancaster</u> <u>PA</u> <u>17602</u> City State ZIP Code Contact phone <u>717-397-3200</u> Contact email <u>SamE@haggertylaw.com</u>
Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____		
4. Does this claim amend one already filed?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM / DD / YYYY	
5. Do you know if anyone else has filed a proof of claim for this claim?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Who made the earlier filing? _____	



**Part 2: Give Information About the Claim as of the Date the Case Was Filed**

6. Do you have any number you use to identify the debtor? ☒ No  
☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: \_\_\_\_\_

7. How much is the claim? \$ 85,000.00 Does this amount include interest or other charges?  
☒ No  
☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by *Bankruptcy Rule 3001(c)(2)(A)*.

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.  
Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).  
Limit disclosing information that is entitled to privacy, such as health care information.

Unliquidated personal injury claim with demand of \$85,000.

9. Is all or part of the claim secured? ☒ No  
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**Nature of property:**  
☐ Real estate. If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.  
☐ Motor vehicle  
☐ Other. Describe: \_\_\_\_\_  
**Basis for perfection:** \_\_\_\_\_  
Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)  
**Value of property:** \$ \_\_\_\_\_  
**Amount of the claim that is secured:** \$ \_\_\_\_\_  
**Amount of the claim that is unsecured:** \$ \_\_\_\_\_ (The sum of the secured and unsecured amounts should match the amount in line 7.)

**Amount necessary to cure any default as of the date of the petition:** \$ \_\_\_\_\_

**Annual Interest Rate (when case was filed)** \_\_\_\_\_ %

☐ Fixed  
☐ Variable

10. Is this claim based on a lease? ☒ No  
☐ Yes. Amount necessary to cure any default as of the date of the petition. \$ \_\_\_\_\_

11. Is this claim subject to a right of setoff? ☒ No  
☐ Yes. Identify the property: \_\_\_\_\_

**12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

☒ No

☐ Yes. Check one:

- ☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).
- ☐ Up to \$2,850\* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).
- ☐ Wages, salaries, or commissions (up to \$12,850\*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).
- ☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).
- ☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).
- ☐ Other. Specify subsection of 11 U.S.C. § 507(a)( ) that applies.

Amount entitled to priority

\$ \_\_\_\_\_

\$ \_\_\_\_\_

\$ \_\_\_\_\_

\$ \_\_\_\_\_

\$ \_\_\_\_\_

\$ \_\_\_\_\_

\* Amounts are subject to adjustment on 4/01/19 and every 3 years after that for cases begun on or after the date of adjustment.

**Part 3: Sign Below**

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If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

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Check the appropriate box:

- ☐ I am the creditor.
- ☒ I am the creditor's attorney or authorized agent.
- ☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
- ☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 11/18/2018  
MM / DD / YYYY

Signature

Print the name of the person who is completing and signing this claim:

Name Samuel G. Encarnacion  
First name Middle name Last name

Title Attorney

Company Haggerty & Silverman, P.C.  
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address 240 North Duke Street  
Number Street

Lancaster PA 17602  
City State ZIP Code

Contact phone 717 397-3200 Email SamE@haggertylaw.com

830 Third Ave, 9<sup>th</sup> Floor

New York, NY 10022

Case No. 18-23538

**PRIME CLERK RECEIVED YOUR  
PROOF OF CLAIM.**

Date Filed: 11/19/2018

Proof of Claim No.: 5361

For additional information, please visit

**<http://restructuring.primeclerk.com/Sears>**,  
or call us at 844.384.4460.

ZIP 11232 \$ 000.35  
02 4W  
0000349804 DEC 07 2018

Maria Gonzalez  
Haggerty & Silverman, P.C.  
240 North Duke Street  
Lancaster, PA 17602

[illegible]

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

---

<b>IN RE:</b>	<b>:</b>	<b>Chapter 11</b>
	<b>:</b>	
<b>SEARS HOLDINGS CORPORATION,</b>	<b>:</b>	<b>Case No. 18-23538 (RDD)</b>
<b>And K-MART CORPORATION</b>	<b>:</b>	<b>(Jointly Administered)</b>

---

**CERTIFICATE OF SERVICE**

I hereby certify that I am this day serving a true and correct copy of the foregoing documents, Notice of Motion for Relief from Stay from Bankruptcy, Order Granting Limited Relief from the Automatic Stay and Affirmation of Motion of Maria Gonzalez for Relief from Automatic Stay, upon the person(s) and in the manner indicated below:

**SERVICE BY E-FILEING AND FIRST CLASS MAIL  
ADDRESSED AS FOLLOWS:**

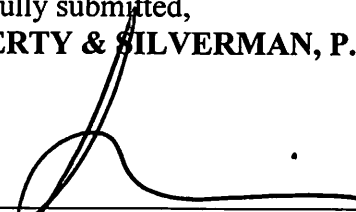
Honorable Judge Robert D. Drain  
United States Bankruptcy Court of Southern New York  
300 Quarropas Street  
White Plains, NY 10601

and

**Jacqueline Mancus**  
**Weil, Gotshal, and Manges, LLP**  
757 Fifth Avenue  
New York, New York 10153

Respectfully submitted,  
**HAGGERTY & SILVERMAN, P.C.**

Dated: Jan 16, 2019

By:   
Samuel G. Encarnacion, Esquire  
Attorney Identification No. 64417  
*Attorney for Plaintiff*